



DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 252

[Docket DARS-2022-0005]

RIN 0750-AL31

**Defense Federal Acquisition Regulation Supplement: Evaluation
Factor for Employing or Subcontracting with Members of the
Selected Reserve (DFARS Case 2021-D013)**

AGENCY: Defense Acquisition Regulations System, Department of
Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense
Federal Acquisition Regulation Supplement (DFARS) to implement a
section of the National Defense Authorization Act for Fiscal
Year 2021.

DATES: Effective **[INSERT DATE OF PUBLICATION IN THE *FEDERAL
REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly R. Ziegler,
Telephone 571-372-6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement section 821 of the
National Defense Authorization Act (NDAA) for Fiscal Year (FY)
2021 (Pub. L. 116-283) that removes the burden of proof at 10
U.S.C. 2305 note when using an evaluation factor for employing
or subcontracting with members of the Selected Reserve.

Accordingly, this rule removes DFARS solicitation provision 252.215-7005, Evaluation Factor for Employing or Subcontracting with Members of the Selected Reserve, and makes conforming changes to the associated provision and clause prescriptions at DFARS 215.370-3.

DFARS provision 252.215-7005 is included in solicitations that contain an evaluation factor that considers whether an offeror intends to perform the contract using employees or individual subcontractors who are members of the Selected Reserve. If an offeror intends to use such employees or subcontractors, the provision requires the offeror to submit certain documentation as proof of its intent with its response to the solicitation.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule

is merely removing an unneeded solicitation provision from the DFARS. The rule primarily impacts internal operating procedures and has no significant cost or administrative impact on contractors or offerors.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products Including Commercially Available Off-the-Shelf (COTS) Items, and for Commercial Services

This rule removes DFARS provision 252.215-7005, Evaluation Factor for Employing or Subcontracting with Members of the Selected Reserve, and the associated prescription at DFARS 215.370-3. The rule does not impose any new requirements on contracts at or below the simplified acquisition threshold, for commercial products including commercially available off-the-shelf items, or for commercial services.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section

6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and to the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the *Federal Register*. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

This rule removes the information collection requirements associated with the provision at DFARS 252.215-7005, Evaluation Factor for Employing or Subcontracting with Members of the Selected Reserve, currently approved under Office of Management and Budget (OMB) Control Number 0704-0446, entitled "Defense Federal Acquisition Regulation Supplement (DFARS) Evaluation Factor for Use of Members of the Armed Forces Selected Reserve".

Accordingly, DoD submitted, and OMB approved, the following reduction of the annual reporting burden and OMB inventory of hours under OMB Control Number 0704-0446 as follows:

Respondents: 13.

Responses per respondent: 1.

Total annual responses: 13.

Hours per response: 20.

Total response burden hours: 260.

List of Subjects in 48 CFR Parts 215 and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 215 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 215 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Revise section 215.370-1 to read as follows:

215.370-1 Definition.

As used in this section—

Selected Reserve has the meaning given that term in 10 U.S.C. 10143. Selected Reserve members normally attend regular drills throughout the year and are the group of Reserves most readily available to the President.

3. Revise section 215.370-3 to read as follows:

215.370-3 Contract clause.

Use the clause at 252.215-7006, Use of Employees or Individual Subcontractors Who Are Members of the Selected Reserve, in solicitations and resulting contracts that include an evaluation factor considering whether an offeror intends to perform the contract using employees or individual subcontractors who are members of the Selected Reserve.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.215-7005 [Removed and Reserved]

4. Remove and reserve section 252.215-7005.
5. Amend section 252.215-7006 by—
 - a. In the introductory text, removing “215.370-3(b)” and adding “215.370-3” in its place; and
 - b. Revising the clause date and paragraph (a).

The revisions read as follows:

252.215-7006 Use of Employees or Individual Subcontractors Who Are Members of the Selected Reserve.

* * * * *

USE OF EMPLOYEES OR INDIVIDUAL SUBCONTRACTORS WHO ARE MEMBERS OF THE SELECTED RESERVE (MAR 2022)

(a) *Definition.* As used in this clause—

Selected Reserve has the meaning given that term in 10 U.S.C. 10143. Selected Reserve members normally attend regular drills throughout the year and are the group of Reserves most readily available to the President.

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